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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CEDRIC BRADEN,

Defendant and Appellant.

B170410

(Los Angeles County  
Super. Ct. No. BA244681)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Stephan A. Marcus, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General,  
Herbert S. Tetef and Jennifer A. Jadovitz, Deputy Attorneys General, for Plaintiff  
and Respondent.

INTRODUCTION

Defendant and appellant Cedric Braden appeals from a conviction on one count of sale, transportation, or offer to sell a controlled substance (cocaine base). (Health & Saf. Code, § 11352, subd. (a).) Appellant was sentenced to a total prison term of eight years in state prison. Appellant appeals from the judgment. We affirm.

Appellant contends the trial court's exclusion of evidence was prejudicial, necessitating reversal. Appellant argues the trial court should have permitted him to demonstrate whether or not he had a physical impairment. Since this contention is unpersuasive, we affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

##### 1. *The prosecution case.*

On March 12, 2003, at approximately 6:00 p.m., it was still daylight. Los Angeles Police Officers Mario Barillas and Michael Saragueta were in an unmarked vehicle on undercover assignment in the area of 84th and Figueroa Street in Los Angeles.

The officers saw appellant standing at the corner. Officer Barillas exited the unmarked vehicle and approached appellant. Appellant asked what Officer Barillas wanted and the officer replied by asking if appellant was "serving," i.e., selling drugs. Appellant asked Officer Barillas if he wanted any "weed," i.e. marijuana. Officer Barillas said, "yes" and appellant directed the officer down the street to a hotel.

Officer Barillas then asked appellant if he had some "hard white," i.e., rock cocaine. Appellant looked toward the unmarked vehicle and asked about the person inside. Officer Barillas and appellant walked to the vehicle. Officer Saragueta "popped" his head out of the window and told appellant he wanted \$25.00 worth of narcotics. Appellant said he only sold "doves," or \$20.00 worth of narcotics. Officer Barillas handed appellant a prerecorded \$20.00 bill. Appellant took the money and "at the same time reached towards his mouth where

he retrieved two off-white rocks resembling rock cocaine” wrapped in plastic. Appellant handed the rocks to Officer Saragueta. The two rocks contained .70 grams of cocaine base.<sup>1</sup>

After receiving the money, appellant walked to a nearby store, where he was detained. Appellant had a total of \$166, including the premarked \$20.00 bill.

## *2. The defense case.*

Appellant’s friend Latrice Pearson testified for appellant. Pearson testified that appellant was being paid to take Pearson’s daughter to and from school. Appellant suggested this explained how he had obtained the money he had been carrying when he was arrested.

Appellant testified on his own behalf to the following. On March 12, 2003, he was going to buy some weed and some wine. He intended to go to the market at 84th Street and then to the motel to buy weed. Prior to entering the market, he was contacted by Officer Barillas. Appellant said “What’s up” and Officer Barillas asked if appellant was serving, i.e., selling anything. Appellant asked Officer Barillas if he wanted some weed. When the officer replied “yeah,” appellant told Officer Barillas to go to the motel down the street, as appellant knew weed was sold there. Appellant testified he did not have any drugs to sell.

Appellant also testified that Officer Saragueta popped his head out of the vehicle and asked Officer Barillas if he “got our dove yet?” Appellant asked the officers where they had been getting their weed. The officers replied, “whoever is out here.” Appellant thought it was odd that Officer Saragueta was there, as not many white people frequented the area. Officer Saragueta asked appellant if appellant could get some dove. Appellant acknowledged taking money from

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<sup>1</sup> In redirect, Officer Barillas testified that if persons have dope in their mouths, they generally will spit it into their hand. Officer Barillas further testified in redirect that he did not remember exactly how appellant got the two rocks from his mouth to his hand.

Officer Barillas, but denied giving the officer any drugs. Rather, according to appellant, he planned to take the money and go to the motel and wait until the officers left the area. Appellant did not believe the officers would venture into a motel in this “rough” neighborhood.

According to appellant’s testimony, he took the money from Officer Barillas and walked into the store anticipating that he would buy some wine. He was arrested in the store.

Appellant claimed it would have been impossible for him to retrieve anything from his mouth with his right hand because it was paralyzed.

### *3. Procedure.*

Appellant was convicted by jury on one count of sale, transportation, or offer to sell a controlled substance (cocaine base). (Health & Saf. Code, § 11352, subd. (a).) In a bifurcated proceeding, the trial court accepted appellant’s admission that he had suffered one prior serious or violent felony conviction. (Pen. Code, §§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i).) Appellant was sentenced to a total prison term of eight years in state prison. Appellant appeals from the judgment.

## DISCUSSION

*The trial court did not err in excluding evidence.*

Appellant contends the trial court erred in excluding demonstrative evidence. He argues he should have been permitted to demonstrate the physical impairment of his right hand. According to appellant, this demonstration would have proven that it was physically impossible for him to commit the crime. This contention is unpersuasive.

### *1. Additional facts.*

Appellant argued he was physically unable to commit the crime as testified to by the undercover officers.

Appellant testified in direct examination that he did not take any drugs from his mouth. He further testified that it would have been impossible for him to retrieve the drugs from his mouth with his *right* hand because it was paralyzed.<sup>2</sup>

At defense counsel's request, appellant held up his hand so the jury could look at it. Defense counsel noted that appellant had two scars running down the inside of his forearm on his right hand and that appellant's fingers and thumb were "sort of curled inward."

Appellant explained that he had received his injury 12 years prior as a result of being pushed through a glass patio door. Appellant explained that in the incident his right hand was almost cut off and that it was presently paralyzed. Appellant also testified that he had no feeling on the inside of his right hand, that he could not straighten out his fingers, and that when he manipulated his fingers, they just "curl[ed] back up." Appellant further explained that while he "probably [could] hold a glass, a cup, or something[,]" he could not pick up a glass or cup off the counter. Demonstrating with his hand, appellant explained how he could hold a glass or cup. He testified he "could use this hand (indicating) and put the cup in this hand (indicating), and it would stay in the hand because my fingers kind of like grasp." Additionally, appellant testified he could not use his right hand to grab two small baggies out of his mouth because he could not feel anything small and the objects would fall when he touched them.

Defense counsel approached the bench and requested permission to have appellant step off the stand and get closer to the jury to show the jury his right hand. The trial court denied the request, stating such a demonstration was

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<sup>2</sup> In direct examination, Officer Barillas did not specify which hand appellant used to retrieve the cocaine from his mouth. In cross-examination, Officer Barillas testified that appellant used his *right* hand to reach into his mouth. This is consistent with the officer's preliminary hearing testimony and the direct and cross-examination testimony of Officer Saragueta.

unnecessary, there were security concerns, and because the “jury is not in a position to be doctors or observe a wound or hand . . . .”

## 2. *Discussion.*

Appellant contends the trial court erred in refusing to permit him to display his right hand to the jury. Appellant argues this would have shown that he was physically unable to commit the crime. This contention is not persuasive.

Evidence includes “things presented to the senses that are offered to prove the existence or nonexistence of a fact.” (Evid. Code, § 140.) This includes the appearance of a person exhibited to a jury. (Com. to Evid. Code, § 140; *People v. Breckenridge* (1975) 52 Cal.App.3d 913, 936 [rejecting argument that defendant was improperly required to exhibit himself to the jury]; *People v. Turner* (1971) 22 Cal.App.3d 174, 180-182 [upholding prosecutor’s request to have defendant dress in manner similar to that of individual who was described as committing crime].)

Further, defendants have a right to introduce evidence relevant to the issues of guilt, including evidence that might cast doubt on the accuser’s credibility. (*People v. Torres* (1964) 61 Cal.2d 264 [conviction reversed when defense prohibited from introducing meteorologist testimony that would have supported defendant’s alibi].) Such evidence would include demonstrative evidence.

However, defendants are not entitled to introduce all evidence. The ordinary rules of evidence apply to defendants, as long as they are not prohibited from presenting a defense. (*People v. Boyett* (2002) 29 Cal.4th 381, 427-428; *People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.) Thus, trial courts may exclude a defendant’s proffered evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or is cumulative. (Evid. Code, § 352.) Trial courts retain the discretion to admit or exclude evidence offered for impeachment. (*People v. Brown* (2003) 31 Cal.4th 518, 534.) Lastly, even if a trial court makes an

evidentiary error, and excludes admissible evidence, we reverse only when prejudice can be shown. (Evid. Code, § 353.)

Here, appellant contends he was precluded from demonstrating his physical impairment. This argument overstates what occurred at trial. In his testimony, appellant explained that he had received an injury to his right hand when he was pushed through a glass door and he discussed the resulting impairment. Appellant displayed his right hand to the jury as his counsel described the scars running down appellant's forearm and the shape of appellant's fingers and thumb as "sort of curled inward." Appellant demonstrated the impairment to his right hand as he described how he could or could not hold a cup. Thus, appellant was not foreclosed from displaying his right hand or from displaying his impairment. Exercising its discretion, the trial court simply precluded appellant from leaving the witness box to duplicate the same presentation as had already been given. (*People v. Ochoa* (2001) 26 Cal.4th 398, 437-438 [trial court's exercise discretion in ruling on admissibility of demonstrative evidence pursuant to Evid. Code, § 352].) Appellant has not shown why it was necessary to repeat the demonstration in a different area of the courtroom or why precluding this second demonstration was prejudicial.

Appellant was not precluded from introducing evidence vital to his defense.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.